

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF  
CALIFORNIA

**Keffier H. Savary v. Eric Arnold**

Savary v. Arnold · No. CV 16-6140-VBF (AGR) · Decided June 23, 2025

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OPINION

Keffier Horace Savary v. Eric Arnold

PER CURIAM.

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IN THE UNITED STATES DISTRICT COURT

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FOR THE CENTRAL DISTRICT OF CALIFORNIA

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9 KEFFIER H. SAVARY, NO. CV 16-6140-VBF (AGR)

10 Petitioner, ORDER ACCEPTING FINDINGS AND

RECOMMENDATION OF

11 v. MAGISTRATE JUDGE

12 ERIC ARNOLD, Warden, 13 Respondent. 14 15 16 Pursuant to 28 U.S.C. § 636, the Court has  
reviewed the Petition for Writ of 17 Habeas Corpus, the other records on file herein, the Report  
and 18 Recommendation of the United States Magistrate Judge (“Report”), and the 19 Objections  
to the Report. Petitioner’s application for an extension of time to re- 20 type his objections to the  
Report is DENIED as unnecessary. (Dkt. No. 155.) The Court has engaged in a de novo review of  
those portions of the Report 21 to which objections have been made. The Court accepts the  
findings and 22 recommendation of the Report. 23 In addition to his objections, Petitioner has  
filed a series of motions, which 24 the Court addresses below. 25 26 27 28 1 A. Motion for Leave  
to File Second Amended Petition for Writ of Habeas 2 Corpus and Motion for Stay 3 Petitioner  
has filed a motion for leave to file a Second Amended Petition for 4 Writ of Habeas Corpus  
(“SAP”) (Dkt. No. 154) and a motion for a stay of this nine- 5 year-old case while he exhausts  
new grounds for relief in the SAP (Dkt. No. 153). For the reasons set forth below, both motions  
are DENIED. 6

1. Proposed New Grounds for Relief

7 The SAP, which is lodged seven years after the statute of limitations 8 expired, contains new  
proposed Grounds 19 through 24 that are admittedly 9 unexhausted. (Dkt. No. 154 at 17-19.) The  
proposed new grounds are wholly 10 without merit and amendment would be futile. See *Lee v.*  
*Thornell*, 118 F.4th 11 969, 990-92 (9th Cir. 2024) (affirming denial of leave to amend habeas  
petition as 12 futile when proposed grounds were untimely and without merit).1 For this reason,

13 the proposed new grounds for relief do not warrant a stay of proceedings. A stay 14 may be appropriate when (1) “the district court determines there was good cause 15 for the petitioner’s failure to exhaust his claims first in state court”; (2) his 16 unexhausted claims are potentially meritorious”; and (3) “there is no indication 17 that the petitioner engaged in intentionally dilatory tactics.” *Rhines v. Weber*, 544 18 U.S. 269, 277-78 (2005). As to the second element, a petitioner “must establish 19 that at least one of his unexhausted claims is not ‘plainly meritless.’” *Dixon v. 20 Baker*, 847 F.3d 714, 722 (9th Cir. 2017) (noting court examines whether “it is 21 perfectly clear that the petitioner has no hope of prevailing”). Petitioner cannot 22 make this showing. 23 1 Petitioner’s conviction became final on August 11, 2015, 90 days after the California Supreme Court denied review on May 13, 2015. (Report at 2); 24 *Bowen v. Rowe*, 188 F.3d 1157, 1159 (9th Cir. 1999). Petitioner commenced filing state habeas petitions before his conviction became final and is entitled to 25 statutory tolling through March 29, 2017, when the California Supreme Court denied the state habeas petition. (Report at 2.) The one-year statute of 26 limitations expired one year later on March 29, 2018. 28 U.S.C. § 22449(d)(1)-

(2). While the FAP is timely (Dkt. No. 51), Petitioner did not lodge the SAP until 27 April 25, 2025, when it was mailed to the court. (Dkt. No. 154-1 at 199-200.) The SAP was lodged over seven years after the one-year statute of limitations 28 expired. 1 In proposed Ground 19, Petitioner contends that the state court acted in 2 excess of its jurisdiction by entering judgment for first degree murder “despite 3 limiting the jury instructions to second-degree only.” (Dkt. No. 154-1 at 145; Dkt.

4 No. 154 at 17; Dkt. No. 154-1 at 141-49.) Petitioner is incorrect. The jury was 5 instructed on both first- and second-degree murder. (7RT 3024-29.) Proposed Ground 20 is based on a pending petition in Superior Court 6 under the California Racial Justice Act (“CRJA”). (Dkt. No. 154 at 17-18.) The 7 CRJA prohibits state criminal convictions and sentences “on the basis of race, 8 ethnicity, or national origin.” Cal. Penal Code § 745 (a). A criminal defendant has 9 the burden of proving a CRJA claim by a preponderance of the evidence. *Id.* 10 Federal habeas relief, however, is available only when a petitioner has been 11 convicted or sentenced in violation of the Constitution, laws, or treaties of the 12 United States. 28 U.S.C. § 2254(a). State law errors are not cognizable on 13 federal habeas review. *Estelle v. McGuire*, 502 U.S. 62, 67 (1991). Even 14 assuming the state courts ultimately reject Petitioner’s CRJA claims, the state 15 courts’ denial would not give rise to a cognizable federal habeas claim. E.g., 16 *Stephens v. Matterson*, 2024 U.S. Dist. LEXIS 236658, \*7 (C.D. Cal. Aug. 22, 17 2024), accepted by 2025 U.S. Dist. LEXIS 4006 (C.D. Cal. Jan. 7, 2025) (“To the 18 extent Petitioner intends to seek relief directly under the CJRA . . . , Petitioner [] 19 cannot state a cognizable habeas claim.”); *Muniz v. Phillips*, 2024 U.S. Dist. 20 LEXIS 58124, \*9-\*10 (C.D. Cal. Mar. 28, 2024) (“Claims brought under the CRJA 21 are . . . not cognizable under federal habeas review.”); *Brooks v. McDowell*, 2024 22 U.S. Dist. LEXIS 23399, \*7 (N.D. Cal. Feb. 9, 2024) (same). 23 Proposed Grounds 21, 23 and 24 are based on pending petitions for resentencing in Superior Court. Proposed Ground 21 is based on a state

petition 24 filed under Cal. Penal Code § 1170(b)(6),<sup>2</sup> Proposed Ground 23 is based on a 25 26 2

As relevant to Petitioner’s argument, Section 1170(b)(6) provides that, when a criminal statute specifies three possible terms of imprisonment, “unless 27 the court finds that the aggravating circumstances outweigh the mitigating circumstances” such that imposition of the lower term “would be contrary to the 28 (continued...) 1 state petition to strike the firearm enhancement under Senate Bill 620,<sup>3</sup> and 2 proposed Ground 24 is based on a pending state petition for recall of sentence 3 pursuant to Cal. Penal Code § 1170.91 (Senate Bill 1209). (Dkt. No. 154 at 18- 4 19; Dkt. No. 154-1 at 150-58, 160-77.) Again, even assuming the state courts 5 ultimately reject the petitions for resentencing, the state courts’ application of state resentencing laws would not present a cognizable claim on federal habeas 6 review. *Lewis v. Jeffers*, 497 U.S. 764, 780 (1990); *Miller v. Vasquez*, 868 F.2d 7 1116, 1118-19 (9th Cir. 1989) (finding federal habeas relief unavailable for claims 8 based on state sentencing laws); *Collins v. Warden*, 2024 U.S. Dist. LEXIS 9 195609, \*2 (N.D. Cal. Oct. 28, 2024) (holding claims under Cal. Penal Code §§ 10 1170(b) and 1170.91 are not cognizable under federal habeas review); *Thomas v. 11 Matterson*, 2024 U.S. Dist. LEXIS 63139, \*5-\*8 (C.D. Cal. Apr. 5, 2024) (holding 12 claim under Senate Bill 620 is not cognizable under federal habeas review); 13 *Cummings v. CDCR Dir.*, 2022 U.S. Dist. LEXIS 66029, \*7-\*8 (C.D. Cal. Apr. 5, 14 2022) (holding § 1170(b) (Senate Bill 567) claim “is a question pertaining solely to 15 California law” and is “not cognizable in a federal habeas proceeding”), accepted 16 by 2022 U.S. Dist. LEXIS 66013 (C.D. Cal. Apr. 7, 2022). 17 Lastly, in proposed Ground 22, Petitioner seeks a court order requiring the 18 prison where he is incarcerated to permit visits with Roselle Savary.<sup>4</sup> (Dkt. No. 19 interests of justice, the court shall order imposition of the lower term if . . . a contributing factor in the commission of the offense” was the defendant’s 20 “psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence.” Cal. Penal Code § 1170(b)(6)(A). 21 3 Senate Bill 620 amended Cal. Penal Code §§ 12022.5 and 12022.53 to 22 grant trial courts the discretion to strike certain firearm enhancements. See *People v. Tirado*, 12 Cal. 5th 688, 695-96 (2022). 23 4 Petitioner was convicted of dissuading Ms. Savary from testifying at his 24 murder trial and conspiracy to commit murder. (LD 18 at 365-66; Dkt. No. 70-6 at 159-60.) With respect to his conspiracy conviction, the Report describes the 25 factual background: “When [Ms. Aguilar] visited Mr. McCain at his office, he showed her the letter [Petitioner] had written from jail in Texas. The letter 26 instructed Mr. McCain to ‘eliminate’ or ‘kill’ Mr. Anderson and Ms. Savary to ‘make sure they weren’t around for trial.’” (Report at 20 (quoting LD 4 at 17.) However, 27 Ms. Aguilar subsequently delivered a note to Mr. McCain. Ms. Aguilar “understood the note to mean that there was a plan to kill both Mr. Anderson and 28 (continued...) 1 154 at 18; Dkt. No. 154-1 at 190-98.) This ground is not cognizable in federal 2 habeas review because it does not challenge Petitioner’s conviction, sentence, or 3 duration of confinement. See *Muhammad v. Close*, 540 U.S. 749, 750 (2004) 4 (per curiam) (“Challenges to the validity of any confinement or to particulars 5 affecting its duration are the province of habeas corpus.”). Complaints about

visitation may be asserted, if at all, in a separate civil rights action. See *Nettles v. 6 Grounds*, 830 F.3d 922, 933 (9th Cir. 2016) (en banc) (“a § 1983 action is the 7 exclusive vehicle for suits about prison life”). 8

## 2. New Evidence

9 Petitioner requests a stay while he presents additional evidence to the state 10 courts, apparently in support of his various recent state petitions. Petitioner has 11 not shown how his additional evidence strengthens his existing grounds for relief 12 in this case to the point that any one of them would become “potentially 13 meritorious.” *Gonzalez v. Wong*, 667 F.3d 965, 980 (9th Cir. 2011). 14 Gang Expert Declarations 15 Petitioner presents two declarations from a gang expert, Ms. Lent, dated

16 June 17, 2024 and February 17, 2025. (Dkt. No. 154-1 at 42-48.) Lent’s

17 declarations refer to the standards in Senate Bill 243 and Senate Bill 467. (Id. at 18 46, 47.) Senate Bill 467 went into effect on January 1, 2023 and amended Cal. 19 Penal Code § 1473 to allow the filing of state habeas petitions under certain 20 circumstances. See *Baptiste v. Mattison*, 2024 U.S. Dist. LEXIS 56510, \*6-\*8 21 (C.D. Cal. Feb. 6, 2024) (finding state courts’ denial of § 1473 petition does not 22 state cognizable claim on federal habeas review), accepted by 2024 U.S. Dist. 23 LEXIS 54209 (C.D. Cal. Mar. 25, 2024), certificate of appealability denied, 2025 24 25 26 Ms. Savary, but that defendant had a change of heart and wanted to keep Ms. Savary alive. . . . She gave the note to Mr. McCain ‘[t]o keep [Ms. Savary] alive’ 27 even though it meant that Mr. Anderson would be killed.” (Id. at 20 (quoting LD 4 at 17.) Petitioner was convicted of conspiracy to commit murder of Mr. Anderson. 28 (LD 20 at 2123; Dkt. No. 70-18 at 122.) 1 Presumably, Lent’s declarations relate to Petitioner’s Napue claims in 2 Grounds Six and Eight, which require a showing that (1) the testimony or 3 evidence was actually false; (2) the prosecution knew or should have known that 4 testimony or evidence was actually false; and (3) there is a reasonable likelihood 5 that the false testimony could have affected the judgment of the jury. (Report at 44); *Catlin v. Broomfield*, 124 F.4th 702, 741 (9th Cir. 2024). The California 6 Supreme Court summarily denied these claims. (Report at 43-44; Dkt. No. 70- 7 23.) 8 Detective Rodriguez was called as a witness during the prosecution’s 9 rebuttal. As the Report discusses, Detective Rodriguez testified that Smith’s last 10 documented gang-related arrest occurred in 1995 and he was with the 74th Street 11 Crips, Hoover, Los Angeles. Between 1995 and his death in 2008, Smith had 12 arrests but none were gang-related. (7RT 2830-31, 2833, Dkt. No. 70-13 at 132- 13 33, 135.) On cross examination, defense counsel pointed out two tattoos on 14 Smith’s body that said H74LA and “for criminals.” Rodriguez testified that the 15 H74LA tattoo indicated 74th Street Crips, Hoover, Los Angeles, and that he knew 16 of the Hoover Crips. Rodriguez testified, however, that he did not know whether 17 Hoover Criminals (a) had at one time been a subset of the Hoover Crips; (b) had 18 any allies with Bloods sects, or (c) were at war with any Crips sects. (7RT 2833- 19 35, Dkt. No. 70-13 at 135-37.) 20 As relevant here, Lent’s declarations opine primarily that the “Hoover Crip 21 gang” began to have “wars and rivalries” with other Crip

gangs in 1992 and 22 ultimately dropped the Crip label. According to Lent, in 1995 all Hoover “gang 23 sets” were called Hoover Criminals except for the 5-Deuce Hoover Crips. The Hoover Criminals are rivals of some Crip and some Blood gangs, but not all. Lent 24 opines that in 1995 Smith was a Hoover Criminal gang member and not a Crip. 25 (Dkt. No. 154-1 at 47.) Lent does not state that she has personal knowledge of 26 Smith or his claimed gang affiliation. 27 28 1 Lent’s declarations do not establish that Rodriguez’s testimony was actually 2 false or that the prosecution knew or should have known that the testimony was 3 actually false. “Testimony that is simply inconsistent or equivocal may not rise to 4 the level of actual falsity.” Catlin, 124 F.4th at 741. Rodriguez testified that Smith 5 was a Crip in 1995 based on his arrest record. Even assuming the 1995 arrest record incorrectly identified Smith’s gang affiliation (either because Smith 6 identified the wrong gang or the arrest record was incorrect for some other 7 reason), there is no evidence that Rodriguez or the prosecution knew or should 8 have known that the 1995 arrest record identified the wrong gang. In addition, 9 there is no evidence as to when Smith obtained the H74LA tattoo, before or after 10 the Hoover Crip gang’s name change. 11 More importantly, even assuming the Hoover Crips had changed their 12 name by the time of Smith’s 1995 arrest, Petitioner has not shown a reasonable 13 likelihood that Rodriguez’s testimony could have affected the judgment of the jury. 14 For the defense, the significance of Smith’s gang affiliation was simply to provide 15 a defensive explanation as to why Petitioner obtained a gun, went to the party 16 with a loaded gun in his front pocket, shot Smith, and then left town (evading 17 arrest for three years). Petitioner testified that he investigated and found out that 18 his wife, Roselle Savary, was cheating on him with Smith. (6RT 2479; Dkt. No. 19 70-12 at 81.) On the day of the shooting, Petitioner went to the party with a 20 loaded gun in his right front pocket. (6RT 2494; Dkt. No. 70-12 at 96.) Petitioner 21 testified that “I did find out he was a gangbanger.” “[H]e was not someone you 22 want to mess with.” “It did scare me.” (6RT 2480-81, Dkt. No. 70-12 at 82-83.) 23 Petitioner testified that, when he arrived outside the party, Smith said, “What up, Cuz? What the fuck you doing over here, Cuz?” (6RT 2496, Dkt. No. 70-12 at 24 98.) The defense gang expert testified that the term “Cuz” is a common Crips 25 term. (6RT 2538; Dkt. No. 70-12 at 140.) Petitioner saw Smith reach for his back 26 pocket, saw a gun, and shot Smith first. (6RT 2497; Dkt. No. 70-12 at 99.) 27 Petitioner testified that, the next day, Sleep told him that “You killed a homey. 28 1 You know what’s next.” (6RT 2502-03; Dkt. No. 70-12 at 104-05.) Petitioner 2 understood that he was a dead man and the target of retaliation. (6RT 2503-04; 3 Dkt. No. 70-12 at 106.) Whether Smith had been a member of the Hoover Crips 4 or Hoover Criminals would not affect this defense. Indeed, Petitioner did not 5 testify that he knew to which gang Smith had belonged. Lent’s declarations may also be relevant to Petitioner’s related Ground Ten, 6 Subclaim 4, in which Petitioner argues ineffective assistance of trial counsel for 7 failure to impeach Detective Rodriguez on Smith’s correct gang. (Report at 65.) 8 As discussed above, Rodriguez acknowledged on cross examination that he did 9 not know whether Hoover Criminals (a) had at one time been a subset of the 10 Hoover Crips; (b) had any allies with Bloods sects, or (c) were at

war with any 11 Crips sects. (7RT 2833-35, Dkt. No. 70-13 at 135-37.) Defense counsel 12 attempted to question Rodriguez further on the historical split between Hoover 13 and the Crips, but the trial judge sustained objections based on lack of 14 foundation. (7RT 2834-35; Dkt. No. 70-13 at 136-37.) If anything, the defense 15 could reasonably have believed that the Crips name would likely be more well 16 known to a jury as a dangerous gang than the Hoover Criminals. Petitioner fails 17 to show either deficiency or prejudice. 18 For these reasons, Lent's declarations do not strengthen Petitioner's 19 existing grounds for relief to the point that any one of them would become 20 "potentially meritorious."5 Gonzalez, 667 F.3d at 980. 21 Investigator Witness Interview Report 22 Petitioner attaches an investigator report of an interview with McCain dated 23 January 14, 2025. (Dkt. No. 154-1 at 50-52.) In the interview, McCain confirms 24 25 5 Lent's other points do not fare any better. For example, Lent states that Rodriguez "wrongfully mislead the jury when he stated Mr. Savary was throwing 26 up a Jamaican Mafia hand sign." (Dkt. No. 154-1 at 45.) Lent mistakenly refers to Rodriguez's testimony outside the presence of the jury at a Cal. Evid. Code § 27 402 hearing. The trial judge precluded Rodriguez from testifying about Petitioner and the Jamaican Mafia, and Rodriguez followed the judge's evidentiary ruling. 28 (7RT 2823-24; Dkt. No. 70-13.) 1 that law enforcement did not transfer Petitioner's music production equipment to 2 him after the trial. (Id. at 51.) 3 At best, this interview report relates to Petitioner's Brady claims in Grounds 4 Nine and Fifteen, in which Petitioner contended the prosecution gave McCain 5 Petitioner's property for his testimony. (Report at 54-56.) The interview report may also relate to Petitioner's ineffective assistance claim based on trial counsel's 6 failure to investigate the location of his laptop in Ground Ten, Subclaim 2. 7 (Report at 60-61.) The Report explains the post-trial proceedings in the record 8 regarding McCain's claims to the musical content on some of Petitioner's 9 equipment. According to the interview report, McCain states that he did not 10 receive Petitioner's music production equipment. The interview report does not 11 strengthen any existing ground for relief to the point that any one of them would 12 become "potentially meritorious." Gonzalez, 667 F.3d at 980; Report at 54-56, 13 60-61. 14 Psychologist's Declaration 15 Petitioner attaches a declaration dated April 4, 2025 from Dr. Roeder, a 16 psychologist. (Dkt. No. 154-1 at 54-56.) Dr. Roeder opines about two subjects. 17 First, according to Dr. Roeder, Petitioner told him that a key witness had 18 changed her testimony after being detained. Petitioner asked him to opine about 19 the susceptibility of a witness who suffered from ADHD and was off her 20 medication. Dr. Roeder opined that the witness "would be more vulnerable to 21 influence and/or manipulation." (Id. at 54 ¶ 3.) 22 This portion of Dr. Roeder's declaration is presumably related to 23 Petitioner's Napue claim in Grounds Six and Eight based on the testimony of Marilyn Aguilar, his girlfriend, at his second trial. Petitioner contends that Aguilar 24 told the truth when she was arrested but subsequently changed her statement as 25 a product of her ADHD and lack of medication. (Report at 47-48.) Petitioner still 26 has not identified any specific testimony that is actually false, or that the 27 prosecution knew or should have known was actually false. (Id.) Nor does 28 1 Petitioner

provide any evidence that Aguilar suffered from ADHD or took 2 medication. The existence of inconsistency or impeachment does not equate to 3 actual falsity. Catlin, 124 F.4th at 741; United States v. Zuno-Arce, 339 F.3d 886, 4 890 (9th Cir. 2003). 5 Second, Dr. Roeder interviewed Petitioner on April 2 and 3, 2025, during which Petitioner described childhood and military trauma. Based on Petitioner's 6 "description of his experiences," Dr. Roeder opined that Petitioner's PTSD (1) 7 "was likely a significant contributing factor in his crime, as he exhibited poor 8 judgment and decision making and even irrational thinking in confronting the 9 victim" and (2) "would appropriately be considered a mitigating factor in the 10 seriousness of his offense." (Dkt. No. 154-1 at 55 ¶ 6; Id. at 55 ¶¶ 4-5.) 11 This portion of Dr. Roeder's declaration is presumably related to 12 Petitioner's ineffective assistance claims based on trial counsel (Ground Ten, 13 Subclaim 2) and sentencing counsel (Ground Twelve). (Report at 62-63, 71-72.) 14 "A fair assessment of attorney performance requires that every effort be made to 15 eliminate the distorting effects of hindsight, to reconstruct the circumstances of 16 counsel's challenged conduct, and to evaluate the conduct from counsel's 17 perspective at the time." Strickland v. Washington, 466 U.S. 668, 689 (1984). 18 Through Dr. Roeder's declaration, Petitioner essentially presents a new and 19 different defense based on post-trial diagnoses. In contrast to Dr. Roeder's 20 declaration, Petitioner testified at trial that when he arrived outside the party, 21 Smith appeared to be high and confronted Petitioner. Trying to show he was 22 there in peace, Petitioner extended his hand out to shake Smith's hand. Smith 23 did not shake his hand and said "Fuck you, Cuz." Petitioner responded that he did not want any problems and asked Smith to "leave my wife alone." (6RT 2496- 24 97, Dkt. No. 70-12 at 98-99.) Petitioner saw Smith pull out a gun. Petitioner 25 pulled out his gun and shot first, only once. (6RT 2498; Dkt. No. 70-12 at 100.) 26 He did not mean to kill Smith. Petitioner grabbed Smith's gun, wiped off his prints 27 from both guns and bullets, put everything in a McDonald's bag, and threw it 28 1 away at a McDonald's. (6RT 2499-2500; Dkt. No. 70-12 at 101-02.) The defense 2 toxicology expert testified that Smith had cocaine, methamphetamine, and alcohol 3 in his system when he died. This combination could cause the person to behave 4 erratically with diminished judgment, and could also cause jerking and rapid hand 5 movement. (Report at 11-12.) Petitioner's testimony essentially describes a self defense scenario in which 6 he was the faster shooter given his military training and Smith's substance abuse. 7 (7RT 2735; Dkt. No. 70-13 at 37.) Petitioner's testimony did not raise a mental 8 health issue. Petitioner did not testify about trauma during his childhood or 9 military service. (6RT 2469-75; Dkt. No. 70-12 at 71-77.) Petitioner had seen his 10 wife with Smith before the shooting without ever confronting Smith. (6RT 2571- 11 72; Dkt. No. 70-12 at 173-74.) Petitioner had previously talked to Smith at 12 Anderson's home without any confrontation. (6RT 2574-75, 2579-80; Dkt. No. 13 176-77, 181-82.) Moreover, Petitioner was cross examined about his recorded 14 calls and visits with Aguilar, in which he talked about coming up with a post- 15 traumatic stress defense. "I was exploring different options because of the fact 16 that I was told [by McCain] that self-defense without a registered firearm is no self 17

defense. So I had to try to figure out what else I could use then, because I knew 18 it was self-defense, but if I couldn't use self-defense, then what else can I use?"<sup>6</sup> 19 (6RT 2555; Dkt. No. 70-12 at 157.) Counsel could reasonably conclude based on 20 the evidence that any PTSD defense would be unconvincing and that the most 21 viable defense was self defense or imperfect self defense. (7RT 3021-23, 3026- 22 27; Dkt. No. 70-13 at 177-79, 182-83); see *Waidla v. Davis*, 126 F.4th 621, 639 23 (9th Cir. 2024) (finding fair minded jurists could conclude mental state defense would not be persuasive based on evidence); *Crittenden v. Ayers*, 624 F.3d 943, 24 25 26 6 Petitioner said he had been stationed in Alaska, isolated from the population and in below-freezing temperatures. (6RT 2554; Dkt. No. 70-12 at 27 156.) In a recorded call, Petitioner told Aguilar he would be seeing a psychiatrist "so I might be seeing you know, hearing shit and seeing demons and shit like 28 that." (1CT 136; Dkt. No. 70-5 at 149.) 1 960-63 (9th Cir. 2010) (finding lack of prejudice when counsel presented alibi 2 defense over mental state defense based on evidence). 3 Petitioner raises his childhood trauma for the first time in his declaration 4 dated November 5, 2024, and states he had no idea he was "screwed-up in the 5 head" before taking self-help groups in prison. (Dkt. No. 154-1 at 85.) Nothing in the record indicates trial counsel or sentencing counsel was on notice of such 6 severe childhood trauma. Petitioner testified at trial to his successful academic 7 and artistic accomplishments in high school in Miami, and to attending college in 8 Pasadena on a full scholarship. (6RT 2469-71, Dkt. No. 70-12 at 71-73.) 9 Sentencing counsel referred to this testimony during sentencing. (7RT 4852-53; 10 Dkt. No. 70-13 at 103-04.) Although Petitioner cites to transcripts of jail 11 recordings of his communications with Aguilar, the pages do not contain 12 information that even remotely resembles the severe beatings and abuse 13 Petitioner describes in his November 5, 2024 declaration and interviews with Dr. 14 Roeder in April 2025. In the jail recordings, Petitioner said he never got along 15 with his mother, who was a pastor, and felt she hated him. His grandmother was 16 the only one who loved him. His grandmother told his mother that she was not 17 raising him right, and his mother threw her out of the house. Petitioner still spoke 18 to his father once in a while. (1CT 174-76; Dkt. No. 70-5 at 187-89.) Petitioner 19 said his mother was jealous. He would call his grandmother "mom" and he would 20 get "cussed out" for that. If his grandmother bought him a gift, his mother would 21 take it away from him. (1CT 176-77, 179-80; Dkt. No. 70-5 at 189-90, 192-93.) 22 His mother tried to get people to turn Petitioner in if they saw him and cared only 23 whether he accepted God in his heart. (1CT 143; Dkt. No. 70-5 at 143.) In this action, Petitioner raises his childhood trauma in his proposed SAP, years after he 24 commenced this action in 2016.<sup>7</sup> See *Benson v. Chappell*, 958 F.3d 801, 830 25 26 7 In a new unsigned statement dated in April 2025, Petitioner states in conclusory fashion that he told trial counsel that he suffered "childhood trauma" 27 and does not mention sentencing counsel. (Dkt. No. 154-1 at 139.) The statement is not signed under penalty of perjury and the one sentence about 28 (continued...) 1 (9th Cir. 2020) (finding that, with no suggestion of severe childhood abuse and in 2 light of countervailing positive evidence, "counsel cannot be faulted for not 3 investigating a suspicion of suppressed past trauma"). 4 The



Court expresses no view as to Petitioner's pending state petitions for 5 resentencing or other relief under California law. With respect to Petitioner's existing grounds for relief in this Court under federal habeas review, Dr. Roeder's 6 declaration, together with Petitioner's new declaration, do not strengthen any 7 existing ground for relief to the point that any one of them would become 8 "potentially meritorious." Gonzalez, 667 F.3d at 980; Report at 54-56, 60-61. 9 B. Motion to File Late Declarations 10 Petitioner's wife, Roselle Savary, invoked the marital privilege at the 11 preliminary hearing and did not testify at the murder trial. (Report at 61.) 12 Petitioner now states that Ms. Savary "says she will do a new declaration to 13 waive marriage privilege 'after' she has filed for U.S. citizenship." (Dkt. No. 152.) 14 However, Ms. Savary does not yet have funds to apply for citizenship. Petitioner 15 also states that he may wish to file new declarations from a handwriting expert 16 and Dr. Roeder. Petitioner provides no estimated dates of completion. 17 Petitioner essentially asks for an indefinite stay of proceedings. One 18 purpose of the AEDPA "is to 'reduce delays in the execution of state and federal 19 criminal sentences.'" Rhines, 544 U.S. at 277 (citation omitted). "Without time 20 limits, petitioners could frustrate AEDPA's goal of finality by dragging out 21 indefinitely their federal habeas review." Id. at 278. For the reasons discussed 22 above, Petitioner has not made the showing required for a stay of proceedings 23 based on his proposed new unexhausted grounds and his new evidence related to existing grounds for relief. An indefinite stay based on future declarations that 24 may never arrive would be inappropriate and Petitioner's motion is DENIED.<sup>8</sup> 25 26 childhood trauma does not describe any specific information Petitioner allegedly gave to trial counsel or when he allegedly did so. That single unsworn sentence 27 does not render any existing ground potentially meritorious. 8 The Report addresses the handwriting expert. (Report at 46, 63-64.) 28 1 C. Motion for Return of Property, Motion for Discovery of Peace Officer 2 Personnel Records (Pitchess Motion) Pursuant to [Cal.] Evid. Code §§ 3 1043, 1045, and Motion for Discovery 4 Petitioner has filed a motion for an order requiring the Los Angeles County 5 Sheriff's Department (LASD) or any other government entity having custody over his personal property in his underlying criminal cases to return it. (Dkt. No. 149.) 6 Petitioner has also filed a motion for discovery of personnel records of Detective 7 Espino, whom he accuses of not returning that property (Dkt. No. 151) and a 8 motion for discovery that, in part, seeks further discovery about Petitioner's 9 property (Dkt. No. 148).<sup>9</sup> 10 The Report describes the post-trial proceedings regarding return of 11 Petitioner's property. (Report at 55-56.) The trial court stated: "Unless you can 12 agree formally with the People regarding release of personal property, defense 13 file a motion for return of property, and the court will address it formally." (4RT 14 2705; Dkt. No. 70-18 at 202.) Petitioner does not claim to have filed such a 15 motion in state court. 16 Petitioner's motion for return of property is DENIED. Federal habeas relief 17 is available "on the ground that [the petitioner] is in custody in violation of the 18 Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). A 19 federal habeas court reviews challenges to the fact or duration of a petitioner's 20 custody. See Bailey v. Hill, 599 F.3d 976, 982 (9th Cir. 2010) (holding state 21 prisoner's in-custody challenge

to restitution in criminal sentence is not cognizable). As this Court previously ruled in the Order dated March 29, 2022 (Dkt. No. 118), Petitioner's motion for return of his property is not cognizable on federal habeas review. See also *Calderon v. Fisher*, 2020 U.S. App. LEXIS 242225 (9th Cir. Sept. 10, 2020) (noting "habeas proceeding is not the proper remedy to obtain the return of property"); *Burgess v. California*, 2022 U.S. Dist. 26 27 9 The Court considers the remainder of Petitioner's motion for discovery below. 1 LEXIS 166110, \*2-\*3 (E.D. Cal. Sept. 14, 2022) (holding property claims are not cognizable on federal habeas review; collecting cases). 3 Petitioner's related motions for discovery are also DENIED. "A habeas 4 petitioner, unlike the usual civil litigant in federal court, is not entitled to discovery 5 as a matter of ordinary course." *Bracy v. Gramley*, 520 U.S. 899, 904 (1997). In a habeas action, a court "may, for good cause, authorize a party to conduct 6 discovery under the Federal Rules of Civil Procedure and may limit the extent of 7 discovery." Rule 6(a), Rules Governing Section 2254 Cases in the United States 8 District Courts. "A party requesting discovery must provide reasons for the 9 request." Rule 6(b). To show good cause, Petitioner must demonstrate that 10 "specific allegations before the court show reason to believe that the petitioner 11 may, if the facts are fully developed, be able to demonstrate that he is . . . entitled 12 to relief." *Bracy*, 520 U.S. at 909. Speculation is insufficient. *Id.*; *Earp v. Davis*, 13 881 F.3d 1135, 1142-43 (9th Cir. 2018) ("Just as bald assertions and conclusory 14 allegations do not afford a sufficient ground for an evidentiary hearing, neither do 15 they provide a basis for imposing upon the state the burden of responding in 16 discovery to every habeas petitioner who wishes to seek such discovery.") 17 Petitioner previously attached a search warrant return signed by Detective 18 Espino that listed Petitioner's property (Dkt. No. 121 at 7) and a search warrant 19 from Marilyn Aguilar's criminal case that listed property Petitioner claims as his 20 (Dkt. No. 121 at 35-36.) Petitioner also attached a letter dated March 22, 2022 21 from the Office of the Sheriff notifying Petitioner that: "We received your request 22 for information on an active warrant and/or court disposition. The information you 23 seek is under the jurisdiction of the court." (*Id.* at 19.) The Office of the Sheriff previously responded to Petitioner with the same information in a letter dated April 24 23, 2021. (*Id.* at 22.) In denying Petitioner's motions for discovery in this action, 25 the magistrate judge reminded Petitioner of the state court's admonition that he 26 must file a motion for return of property in that court. (See Dkt. Nos. 94, 99, 124.) 27 28 1 Petitioner's renewed motion for discovery of Detective Espino's personnel 2 file appears to be based on Petitioner's contention that his new evidence shows 3 Espino kept the property for himself. Petitioner is incorrect. According to the 4 investigator's interview report discussed above, "McCain said the LAPD had the 5 production equipment, but they did not give it to him." (Dkt. No. 154-1 at 51.) The record also belies Petitioner's contentions that Detective Espino unlawfully seized 6 the property without documentation of chain of custody, unlawfully transferred the 7 property to McCain, and deprived Petitioner of this exculpatory/impeachment 8 evidence in violation of *Napue* and *Brady*. (Report at 45-46, 55-56.) Both 9 motions for discovery of property-related materials are denied for the

further 10 reason that Petitioner's claim for return of property is not cognizable under federal 11 habeas review. See *Bracy*, 520 U.S. at 909. 12 D. Motion for Order Correcting Record and Allowing Visits with Roselle 13 Savary 14 Petitioner has filed a motion for a court order to the prison correcting the 15 record and requiring the prison to allow visits with Roselle Savary. (Dkt. No. 147.) 16 As discussed above in connection with proposed Ground 22, Petitioner's 17 requested relief is not available in a habeas proceeding. See *Muhammad*, 540 18 U.S. at 750 ("Challenges to the validity of any confinement or to particulars 19 affecting its duration are the province of habeas corpus."). Complaints about 20 visitation may be asserted, if at all, in a separate civil rights action. See *Nettles*, 21 830 F.3d at 933 ("a § 1983 action is the exclusive vehicle for suits about prison 22 life"). Petitioner's motion is DENIED. 23 E. Motion to Consider Evidence and Expand the Record Petitioner has filed a motion to expand the record to include the new 24 evidence attached to his proposed SAP. (Dkt. No. 150.) 25 The letter from Delancey Street dated February 8, 2012 is already part of 26 the record. (Dkt. No. 70-21 at 279.) Petitioner's motion as to this document is 27 DENIED as unnecessary. (Dkt. No. 150 at 33.) The motion as to other 28 1 documents from Delancey Street, which explain the program or post-date 2 sentencing, are DENIED as unnecessary to resolve the operative petition. See 3 *Perez v. Ducart*, 2019 U.S. Dist. LEXIS 108907, \*21 n.5 (N.D. Cal. June 28, 2019) 4 (denying motion to expand record to include unnecessary documents). 5 The Court declines to expand the record to include all remaining documents, which are submitted in support of the proposed SAP and were not 6 submitted to the state courts that adjudicated Petitioner's claims on the merits. 7 *Cullen v. Pinholster*, 563 U.S. 170, 185-86 (2011); see *Rodriguez v. Thornell*, 8 2025 U.S. Dist. LEXIS 6882 (9th Cir. Mar. 25, 2025) (finding district court did not 9 abuse discretion in declining to expand record to include documents not 10 submitted to state court). Petitioner's motion is DENIED. 11 F. Motion for Discovery 12 Petitioner filed a motion for wide-ranging discovery in support of his 13 proposed SAP. (Dkt. No. 148.) The motion inexplicably requests discovery that 14 would be futile: Petitioner includes proposed questions to Aguilar, who he states 15 is deceased, and proposed questions to Roselle Savary, who has claimed the 16 marital privilege. (See Section B above.) 17 More broadly, as discussed above, a party must show good cause for 18 discovery in a habeas action. Rule 6(a). To show good cause, Petitioner must 19 demonstrate that "specific allegations before the court show reason to believe that 20 the petitioner may, if the facts are fully developed, be able to demonstrate that he 21 is . . . entitled to relief." *Bracy*, 520 U.S. at 909. The Court has denied 22 Petitioner's motion for leave to file the SAP and, therefore, Petitioner does not 23 show good cause for discovery related to his proposed Grounds 19-24. To the extent Petitioner seeks discovery as to existing grounds for relief, 24 Petitioner also fails to show good cause. 25 Petitioner does not show good cause for discovery of Aguilar's plea deal 26 with the prosecution because the defense had that information at trial. Aguilar 27 testified that she had been arrested on May 5, 2011 and charged with conspiracy 28 1 to commit murder and dissuading a witness. Aguilar had no previous record and, 2 by the time of her trial testimony, had

been incarcerated for over one year. (4RT 3 1820, 1855, 1867; Dkt. No. 70-18 at 32, 67, 79.) She gave a videotaped 4 statement to the prosecution in November 2011. (4RT 1856-57; Dkt. No. 70-18 at 5 68-69.) On the Friday before her July 16, 2012 trial testimony, she pled no contest to dissuading a witness. (4RT 1857; Dkt. No. 70-18 at 69.) Aguilar was 6 required to testify truthfully at Petitioner's trial. (4RT 1858; Dkt. No. 70-18 at 70.) 7 On cross examination, Aguilar acknowledged that, as part of her plea deal, she 8 would receive time served whereas she was facing 25 years to life if convicted. 9 (4RT 1867-68; Dkt. No. 70-18 at 79-80.) Defense counsel cross examined 10 Aguilar based on her initial statement to police that she did not understand the 11 contents of the note she handwrote. The jury heard her explanations for any 12 alleged inconsistencies. (4RT 1868-70, Dkt. No. 70-18 at 80-82.) 13 Petitioner does not show good cause for discovery of whether Aguilar had a 14 diagnosis of ADHD and wore glasses. Although Petitioner argues that this 15 discovery would be relevant to his Brady claim, Petitioner's motion acknowledges 16 that Petitioner knew Aguilar, his girlfriend, had ADHD and wore glasses. (Dkt. 17 No. 148 at 2.) The prosecution (assuming it had this evidence) cannot have 18 suppressed it within the meaning of Brady when the defense knew it existed. 19 *Cunningham v. Wong*, 704 F.3d 1143, 1154 (9th Cir. 2013); *Raley v. Ylst*, 470 20 F.3d 792, 802-03 (9th Cir. 2006). 21 Petitioner does not show good cause for his request that the court 22 subpoena Aguilar's attorney and family members to testify about whether they 23 ever heard Aguilar make statements that she was innocent, that she lied at Petitioner's trial, and the like. Petitioner's request is based on mere speculation 24 and amounts to an impermissible fishing expedition. *Earp v. Davis*, 881 F.3d 25 1135, 1144 (9th Cir. 2018) (affirming denial of request "to fish for evidence that 26 may support a defense theory" in habeas proceedings; "This is exactly the type of 27 fishing expedition we are admonished not to permit."); *Calderon v. U.S. Dist. Ct.*, 28 1 98 F.3d 1102, 1106 (9th Cir. 1996) (courts should not permit use of "federal 2 discovery for fishing expeditions to investigate mere speculation"); see also 3 *Bemore v. Chappell*, 788 F.3d 1151, 1176-77 (9th Cir. 2015). 4 Petitioner has not shown good cause for production of the Texas letter and 5 the exemplars used by the prosecution's handwriting expert. The text of the Texas letter is set forth on page 32 of the Report. As discussed above, the Court 6 denies Petitioner's motion for an indefinite stay of proceedings while he looks for 7 a handwriting expert, among other things. Moreover, Petitioner has not shown 8 any reason to believe that, if the facts are fully developed, he would be able to 9 demonstrate that he is entitled to relief. *Bracy*, 520 U.S. at 909. Petitioner was 10 specifically asked at trial about the Texas Letter: "All of this is your words, not 11 that inmate's words, right?" Petitioner testified, "Yes, it is my words." (7RT 2750; 12 Dkt. No. 70-13.) Petitioner testified as to what he meant by the words in the 13 Texas Letter. (7RT 2748, 2752; Dkt. No. 70-13.) Thus, whether or not another 14 inmate actually handwrote one or more words in the Texas Letter would not 15 render any existing ground for relief potentially meritorious. 16 Petitioner's motion is DENIED. 17 18 IT IS THEREFORE ORDERED that judgment be entered denying 19 the Petition

and dismissing this action with prejudice. 20 21 Dated: June 23, 2025 /s/ Valerie Baker Fairbank  
22 \_\_\_\_\_ 23 Senior U.S. District Judge 24 25 26 27 28

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